

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT  
WESTERN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

TERRY ALLEN FIFE, II.,

Defendant.

No. 18-CR-4054-LTS

**ORDER**

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This case is before me on (1) a Report and Recommendation (R&R) (Doc. No. 53) in which Chief United States Magistrate Judge Kelly K.E. Mahoney recommends that I grant defendant's motion (Doc. No. 41) to suppress evidence and (2) the Government's unresisted motion (Doc. No. 55) to dismiss the indictment without prejudice.

Because the Government is seeking dismissal without prejudice, I find it prudent to address the R&R concerning defendant's motion to suppress. Both parties have filed notices (Doc. Nos. 54, 56) of no objection to the R&R. Because there are no objections, I review the R&R for clear error. *See, e.g., Grinder v. Gammon*, 73 F.3d 793, 795 (8th Cir. 1996) (noting that when no objections are filed "[the district court judge] would only have to review the findings of the magistrate judge for clear error"). Having reviewed the R&R, I find no error – clear or otherwise – in Judge Mahoney's factual findings and legal conclusions. As such, I will accept the R&R and grant the motion to suppress evidence.

As for the Government's motion to dismiss, Federal Rule of Criminal Procedure 48(a) permits the Government to dismiss an indictment with leave of court. The dismissal must be with the defendant's consent only if it occurs during trial. Fed. R. Crim. P. 48(a). Here, while the defendant's consent is not required, the Government's motion states that counsel for the defendant has indicated that the defendant has no objection to

the requested relief. Doc. No. 55 at 1. As such, I will grant the motion and dismiss the indictment without prejudice.

For the reasons set forth herein:

1. I **accept** Judge Mahoney's Report and Recommendation (Doc. No. 53) in its entirety and without modification. Defendant's motion (Doc. No. 41) to suppress evidence is hereby **granted**.

2. The Government's unresisted motion (Doc. No. 55) to dismiss the indictment without prejudice is **granted**. The indictment (Doc. No. 1) is hereby **dismissed without prejudice**.

3. The trial of this matter, currently set to begin February 4, 2019, is **canceled**.

4. Defendant Terry Allen Fife II shall be **released from custody** immediately.

**IT IS SO ORDERED.**

**DATED** this 10th day of January, 2019.



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Leonard T. Strand, Chief Judge